

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

STEVES AND SONS, INC.,

Plaintiff,

v.

Civil Action No. 3:20-cv-98

JELD-WEN, INC.,

Defendant.

AMENDED ORDER OF PRELIMINARY INJUNCTION

This AMENDED ORDER OF PRELIMINARY INJUNCTION supersedes and replaces the ORDER OF PRELIMINARY INJUNCTION entered on April 10, 2020 (ECF 123).

Having reviewed PLAINTIFF STEVES AND SONS, INC.'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION (ECF No. 2), the supporting, opposing, and reply memoranda, having received evidence *ore tenus* and in documents that are in the record, having considered the arguments of counsel for Steves and Sons, Inc. ("Steves") and JELD-WEN, Inc. ("JELD-WEN"), and, for the reasons set forth in the MEMORANDUM OPINION entered on April 10, 2020 (ECF 121), the Court finds that Steves clearly and convincingly has established that:

(1) There is a substantial likelihood, amounting to a near certainty, that Steves will succeed on the merits of COUNT THREE of the COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF, DAMAGES, AND SPECIFIC PERFORMANCE (ECF No. 1; ECF No. 6) (the "Complaint"), the breach of contract claim against JELD-WEN on the grounds that:

- (a) JELD-WEN breached the Doorskin Product Agreement (the "Supply Agreement") by refusing to deliver fully the doorskins Steves ordered during the fourth quarter of 2019; and
 - (b) JELD-WEN breached the Supply Agreement by giving notice of allocation in violation of Section 20 of the Supply Agreement; and
 - (c) Even if allocation had been in conformance with Section 20 of the Supply Agreement (which it was not), by adopting an allocation method that is neither fair nor reasonable, JELD-WEN breached the Supply Agreement; and
- (2) Absent a temporary injunction, Steves will suffer irreparable injury as a result of the breaches described in paragraph 1(a)-(c); and
- (3) As a result of a temporary injunction, JELD-WEN will suffer some, but not adequately-proven, economic hardship, which is, however, significantly of its own creation and which is a consequence of the terms to which it bound itself in the Supply Agreement; and
- (4) The balance of hardships tips decidedly in favor of Steves; and

(5) The public interest will be served by a preliminary injunction.

Therefore, it is ORDERED, pending the results of trial on the merits that is set for July 27, 2020 and any order that is entered thereafter that JELD-WEN shall:

(A) Terminate allocation, as to Steves, effective retroactively to January 1, 2020;

(B) Terminate, as to Steves, the ordering, confirmation, and delivery process (the so-called mix methodology) unilaterally instituted as part of allocation; and

(C) Revert to the parties' previous ordering, confirmation, and delivery process pending the results of trial on the merits and any order that is entered thereafter.

Although JELD-WEN denies the allegations of Steves' complaint and objects to the entry of the injunction for the reasons set forth in the record, pursuant to the representations of counsel for the parties during a telephonic hearing on April 29, 2020, that the parties have reached certain agreements regarding the delivery of doorskins ordered by Steves between November 25, 2019 and the date of this Order but not yet delivered by JELD-WEN, and related matters regarding future orders for doorskins to be placed by Steves, it is further ORDERED that:

(A) JELD-WEN shall deliver to Steves the doorskins specified in Schedule A attached hereto, such deliveries to take place

during the weeks specified in Schedule A pursuant to the parties' course of performance under the Supply Agreement between May 2012-October 2019, and to be made at the Steves' door manufacturing plants as directed by Steves reasonably in advance of the delivery due dates;

(B) Steves shall provide JELD-WEN with non-binding forecasts by SKU for the monthly purchase orders it expects to place in May, June, and July (for delivery within 30 days of the date of the orders), with the May monthly forecast (of orders to be submitted in May for June delivery) to be delivered to JELD-WEN not later than Friday, May 1, 2020; the June monthly forecast (of orders to be submitted in June for July delivery) to be delivered to JELD-WEN not later than Friday, May 29, 2020; and the July monthly forecast (of orders to be submitted in July for August delivery) to be delivered to JELD-WEN not later than Friday, June 26, 2020.

(i) In the event that JELD-WEN considers Steves' actual purchase orders for a week to be materially greater or lesser for any SKU than JELD-WEN reasonably anticipated based on Steves' forecasts, Steves agrees that it will consult with JELD-WEN whether there are reasonable alternatives, including but not limited to extending the lead time for delivery, to address JELD-WEN's and Steves'

respective needs. The fact that JELD-WEN considers Steves' orders to be greater or lesser than it reasonably anticipated is not a basis on which JELD-WEN may withhold any doorskins or unilaterally modify its delivery of doorskins to Steves. If the parties are unable to reach an agreement on a purchase order that JELD-WEN considers to be materially greater or lesser, the parties agree that the dispute will be submitted to this Court for resolution.

(ii) The forecasts provided pursuant to this provision are non-binding and intended solely to assist JELD-WEN in its production planning during the course of the preliminary injunction. The forecasts do not modify the parties' obligations and rights with respect to the Supply Agreement and shall not provide a basis for a claim or excuse of non-performance arising out of 6 Del. C. § 2-306 or any other applicable law.

(iii) In the event that JELD-WEN states between the date of this Order and trial that it is no longer in allocation, with respect to its other independent doorskin customers, before a forecast is due, Steves shall be relieved of its obligation to

Schedule for Current Orders

PO's received 3/26 Ship week 4/20	PO's received 4/3 Ship week 4/27	PO's received 4/9 Ship week 5/4	PO's received 4/16 Ship week 5/11	PO's received 4/24 Ship week 5/18
PO's	PO's	PO's	PO's	PO's
104343	104607	104784	104922	105234
104344	104608	104785	104923	105235
104345	104609	104786	104924	105236
104346	104610	104787	104925	105237
104347	104611	104788	104926	105238
104348	104612	104789	104927	105239
104349	104613	104790	104928	105240
104350	104614	104791	104929	105241
104351	104615	104792	104930	105242
104352	104616	104793	104931	105243
104353	104617	104794	104932	105244
104354	104619	104795	104933	105245
104355	104620	104796	104934	105246
104356	104621	104797	104935	105247
104357	104622	104798	104936	105248
104358	104623	104799	104937	105249
104359	104624	104800	104938	105250
104360	104625	104801	104939	105251
104361	104626	104802	104940	105252
104362	104627	104803	104941	105253
104363	104645	104804	104942	105254
104364	104646	104805	104943	105255
104365	104647	104806	104944	105256
104366	104648	104807	104945	105257
104367	104649	104808	104946	105258
104368	104650	104809	104947	105259
104369	104651	104810	104948	105260
104370	104652	104811	104949	105261
104371	104653	104812	104950	105262
104372	104654	104813	104951	105263
104373	104655	104814	104952	105264
104374	104661	104815	104953	105265
104375	104662	104816	104954	105266
104376	104663	104817	104955	105267
104377	104664	104818	104956	105268
104378	104665	104819	104957	105269
104379	104666	104820	104959	105270
104380	104667	104821	104960	105271
104381	104668	104824	104961	105272
104382	104669	104825	104962	105273
104383	104670	104826	104963	105274
104384	104671	104827	104964	105275
104385	104672	104828	104965	105276
104386	104673	104829	104966	105277
104387	104674	104830	104967	105278
104388	104675	104831	104968	105279
104389	104676	104832	104969	105280
104390	104677	104833	104970	105281
104391	104678	104834	104971	105282
104392		104835	104972	105283

104393		104836	104973	105284
104394		104837	104980	105285
104395		104838	104981	105286
104396		104839	104982	105287
104397		104840	104983	105288
104398		104844	104984	105289
104399		104845	104985	105290
104400		104846	104986	105291
104401		104847	104987	105292
104402		104848	104988	105293
104403		104849	104989	105294
104404		104850	104990	105295
		104851		105296
		104852		105297
		104853		105298
		104854		105299
		104855		105300
		104856		105301
		104857		

Schedule for Backlog Orders						
Ship week 5/4	Ship week 5/11	Ship Week 5/18	Ship week 5/25	Ship week 6/1	Ship week 6/8	Ship week 8/3
PO's	PO's	PO's	PO's	PO's	PO's	PO's
100673	100818	101074	101075	101073	101170	101230
100817	100819	101399	101401	101669	101381	101961
101026	101654	101400	101402	101674	101398	102176
101220	101655	101687	101673	101676	101657	102184
101228	101656	101688	101689	101677	101692	102185
101229	101658	101931	101690	101678	101693	102186
101379	101698	101947	101691	101694	101937	102187
101649	101926	101948	101928	101960	101954	102188
101650	101957	101949	101953	101969	101955	102189
101696	101965	101952	101963	102155	102150	102190
101930	101966	101956	101968	102183	102269	102221
101951	101970	102151	102148	102276	102271	102222
101958	101978	102152	102227	102277	102272	102223
101959	101981	102159	102229	102285	102273	102224
101964	102154	102160	102281	102290	102278	102295
101967	102158	102163	102282	102332	102294	102296
101977	102161	102165	102284	102337	102336	102335
102146	102164	102268	102286	102338	102358	102342
102147	102166	102275	102288	102354	102360	102343
102149	102228	102280	102289	102359	102442	102344
102153	102274	102283	102297	102475	102473	102345
102220	102298	102333	102457	102479	102486	102346
102270	102340	102341	102477	102492	102491	102347
102279	102351	102356	102495	102762	102503	102963
102287	102352	102361	102496	102777	102745	102964
102293	102357	102448	102499	102778	102763	102965
102353	102362	102471	102956	102950	102927	102969
102723	102494	102952	103151	102951	102930	102980
102757	102729	102986	103171	102989	102992	102981
102955	103345	103554		103172	103187	102935
		101641		103173	103311	102936
				103307	103313	101205
				103545	103362	101397
				103546	103363	101679
					103529	101680
						101681
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						102461
						102508
						102765